

IN THE CLAIMS

1-31. (canceled)

32. (previously presented) A method for increasing the synthesis of skin lipids comprising:

administering to a subject a composition comprising at least one plant oil product selected from the group consisting of oil distillates of plant oil, unsaponifiable materials from plant oil, furan lipids of plant oil and mixtures thereof.

33. (previously presented) The method of claim 32 wherein the skin lipids are lipids of the epidermal skin barrier.

34. (previously presented) The method of claim 33 wherein the lipids of the epidermal skin barrier are selected from the group consisting of cholesterol, cholesterol sulfate, ceramides 1 and 2 and mixtures thereof.

35. (previously presented) The method of claim 32 wherein the unsaponifiable materials from plant oil are rich in tocopherols and/or phytosterols.

36. (previously presented) The method of claim 32 wherein the oil distillates of plant oil are rich in tocopherols and/or phytosterols.

37. (previously presented) The method of claim 32 wherein the oil distillates of plant oil are oil distillates of sunflower oil.

38. (previously presented) The method of claim 32 wherein the unsaponifiable materials from plant oil are unsaponifiable materials selected from the group consisting of avocado, soybean and mixtures thereof.

39. (previously presented) The method of claim 32 wherein the unsaponifiable material from plant oil is a mixture of unsaponifiable material from avocado oil and unsaponifiable material from soybean oil, the weight ratio of unsaponifiable

material from avocado oil to unsaponifiable material from soybean oil being between about 0.1 and about 9.

40. (previously presented) The method of claim 32 wherein the furan lipids of plant oil are furan lipids of avocado.

41. (previously presented) The method of claim 32 wherein the plant oil product is present in an amount of between about 0.01% and 100% by weight relative to the total weight of the composition.

42. (previously presented) The method of claim 32 wherein the composition is administered topically, orally, enterally or parenterally.

43. (previously presented) The method of claim 32 wherein the composition is applied to the skin, the neighboring mucous membranes and/or the integuments.

44. (previously presented) The method of claim 32 wherein the composition is adapted to treat dry skin.

45. (previously presented) The method of claim 32 wherein the composition is adapted to treat skin that has been subjected to actinic radiation.

46. (previously presented) The method of claim 32 wherein the composition is adapted to treat skin that has been subjected to UV radiation.

47. (previously presented) The method of claim 32 wherein the composition is adapted to treat ichthyosis.

48. (previously presented) The method of claim 32 wherein the composition is adapted to treat acne.

49. (previously presented) The method of claim 32 wherein the composition is adapted to treat xerosis.

50. (previously presented) The method of claim 32 wherein the composition is adapted to treat atopic dermatitis.

51. (previously presented) The method of claim 32 wherein the composition is adapted to treat skin disorders caused by a reduction in the content of skin lipids.

52. (previously presented) The method of claim 32 wherein the composition is adapted to treat skin disorders caused by a reduction in the content of skin lipids of the epidermal skin barrier.

53. (previously presented) The method of claim 32 wherein the composition is adapted to treat skin that is sensitive, irritated or reactive.

54. (previously presented) The method of claim 32 wherein the composition is adapted to treat corneocyte cohesion disorders.

55. (previously presented) The method of claim 32 wherein the composition is adapted to treat desquamation of the skin.

56. (previously presented) The method of claim 32 wherein the composition is adapted to treat pruritus.

57. (previously presented) The method of claim 32 wherein the composition further comprises a cosmetic, pharmaceutical or dermatological composition.

58. (previously presented) The method of claim 57 wherein the cosmetic, pharmaceutical or dermatological composition comprises an oily solution, a water-in-oil emulsion, an oil-in-water emulsion, a micro-emulsion, an oily gel, an anhydrous gel or a dispersion of vesicles, microcapsules or microparticles.

59. (currently amended) A method for increasing the synthesis of skin lipids comprising:

administering to a subject a composition comprising at least one plant oil product selected from the group consisting of oil distillates of plant oil, unsaponifiable materials from plant oil, furan lipids of plant oil and mixtures thereof

wherein the plant oil product is ~~comprises~~ a food additive for humans and/or animals.

60. (currently amended) The method of claim 59 wherein the composition is a food composition for humans and/or animals and the plant oil product is present in a the food composition in a proportion of between about 0.1% and about 20% by weight relative to the total weight of the food composition.

RESPONSE

This paper is in response to the Official Action mailed July 28, 2004.

As an initial matter, Applicants note that priority under 35 U.S.C. §§ 119 and 120 has not been recognized in the Office Action Summary. Applicants respectfully submit that the instant application claims priority from FR 99 11844. A copy of the International Application has been communicated by the International Bureau. Applicants respectfully request that the Examiner acknowledge Applicants' claim of foreign priority.

Claims 59 and 60 stand rejected under 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. To address the Examiner's rejections based upon 35 U.S.C. § 112, Applicants have amended claims 59 and 60 for purposes of clarification. The present amendment is not intended to narrow the scope of the claim. No new matter has been added by way of amendment; thus, entry of this amendment is respectfully requested.

Claims 32-36 and 41-60 stand rejected under 35 U.S.C. § 102(b) as being anticipated by *Laigneau et al.*; claims 32-37 and 41-60 stand rejected under 35 U.S.C. § 102(b) as being anticipated by *Montaudoin et al.*; claims 32-36, 38, 41, 42 and 44-60 stand rejected under 35 U.S.C. § 102(b) as being anticipated by *Rancurel*; claims 32-36 and 42-59 stand rejected under 35 U.S.C. § 102(b) as being anticipated by *De Froment*; claims 32-34 and 40-59 stand rejected under 35 U.S.C. § 102(b) as being anticipated by *Huber et al.*; claims 32-34, 38, 41-44 and 51-60 stand rejected under 35 U.S.C. § 102(b) as being anticipated by *Khaiat*; claims 32, 33, 35, 38 and 41-60 stand rejected under 35 U.S.C. § 102(b) as being anticipated by *Aron-Bruntiere et al.*; claims 32-34, 39, 41-44, 47-53 and 57-60 stand rejected under 35 U.S.C. § 102(b) as being anticipated by

Guillon; claims 32-36 and 41-60 stand rejected under 35 U.S.C. § 102(b) as being anticipated by *Sekimoto et al.*; claims 32-34 and 41-60 stand rejected under 35 U.S.C. § 102(b) as being anticipated by *Inoue et al.*; and claims 32-35 and 41-60 stand rejected under 35 U.S.C. § 102(b) as being anticipated by *Moy*.

Claim 32 recites a method for increasing the synthesis of skin lipids by administering to a subject a composition comprising at least one plant oil product selected from the group consisting of oil distillates of plant oil, unsaponifiable materials from plant oil, furan lipids of plant oil and mixtures thereof. Claim 59 recites a method for increasing the synthesis of skin lipids by administering to a subject a composition comprising at least one plant oil product selected from the group consisting of oil distillates of plant oil, unsaponifiable materials from plant oil, furan lipids of plant oil and mixtures thereof wherein the plant oil product is a food additive for humans and/or animals. Because none of the references cited by the Examiner discloses a method for increasing the synthesis of skin lipids, Applicants respectfully traverse the Examiner's rejections.

Each reference cited by the Examiner is directed generally to the administration of plant oil products to treat certain skin conditions. However, there is no reference that teaches each and every element of claim 32 or claim 59. None of the references cited teaches, or even suggests, administering a composition as claimed for increasing the synthesis of skin lipids. Indeed, each of the references is silent with respect to the effect of the various oils on skin lipids. Moreover, none of the references cited discloses that the synthesis of the skin lipids can be stimulated so as to be able to restore the skin barrier function of the epidermis, and/or to combat various skin disorders that are caused by a reduction in the synthesis

of skin lipids. Thus, the references cited by the Examiner cannot anticipate the claimed invention.

It appears that the Examiner is attempting to overcome the deficiencies of the references by contending that the administration of a composition comprising the same ingredients as claimed in the present invention would apparently necessarily and always prevent the skin disease conditions recited in the present claims and therefore anticipate the claimed methods. The Examiner seems to suggest, therefore, that because the references are directed to methods for treating some skin disease conditions, they inherently teach a method for increasing the synthesis of skin lipids. This is absolutely contrary to the case law. Anticipation requires that each and every element which is set forth in the claim is found, either expressly or inherently, in a single prior art reference. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949 (Fed. Cir. 1999) (citation omitted). Although a reference may still anticipate if the element is inherent in its disclosure, to establish inherency, the extrinsic evidence "must make clear that that missing descriptive matter is necessarily present in the thing described in the reference and that it would be so recognized by persons of ordinary skill." *Continental Can Co. v. Monsanto Co.*, 940 F.2d 1264, 1268, 20 U.S.P.Q.2d 1746, 1749 (Fed. Cir. 1991). Significantly, the Federal Circuit has held that inherency "may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *Id.* at 1269, 948 F.2d 1264, 20 U.S.P.Q.2d at 1749 (quoting *In re Oelrich*, 666 F.2d 578, 581, 212 U.S.P.Q. 323, 326 (C.C.P.A. 1981)). There is absolutely no actual evidence provided to support the legal conclusion of inherency. Therefore, it is improper to merely allege something is inherent and force Applicants to try to prove the negative.

Moreover, a new use of a known compound can be patentable subject matter if it is recited in a method claim. In this regard, the Examiner is referred to *CTS Corp. v. Electro Materials Corp. of America*, 469 F. Supp. 801, 202 U.S.P.Q. 22, 41 (S.D.N.Y. 1979) where the court stated the following:

The person who discovers a new use may be able to patent the method of achieving this result, but any patentable subject matter would have to lie elsewhere than in claiming the old thing itself as a composition of matter.

The present claims of record are directed to a method for increasing the synthesis of skin lipids. The claims of record do not recite compositions *per se*. Furthermore, none of the cited references disclose the use of their compositions to treat various skin disorders associated with a reduction in the synthesis of skin lipids. Therefore, Applicants submit that the methods of claim 32 and claim 59 are not anticipated by the cited references and that this rejection cannot be maintained. Reconsideration and withdrawal of this rejection is therefore respectfully requested.

Claims 33-58 depend from claim 32, and include all of the recitations of claim 32; claim 60 depends from claim 59, and includes all of the recitations contained in that claim. For the reasons stated above, the cited references cannot anticipate claims 33-58 and 60 because none of the cited references contain each and every element of claim 32. Further, the Examiner has not addressed several of the additional limitations contained in the dependent claims, which are not disclosed by any of the cited references. For example, claims 33 and 34 include the limitation that the skin lipids are lipids of the epidermal skin barrier. Also, claims 51 and 52 include the recitation that the

composition is adapted to treat skin disorders caused by a reduction in the content of skin lipids. None of the cited references discloses a method for restoring the skin barrier of the epidermis, for preventing and/or treating the impairment of the skin barrier or for treating skin disease conditions associated with a reduction in the synthesis of skin lipids, especially the lipids of the epidermal skin barrier. Therefore, Applicants submit that claims 33-58 and 60 not anticipated by the cited references and that these rejections cannot be maintained. Reconsideration and withdrawal of these rejections are therefore respectfully requested.

In view of the foregoing amendments and remarks, further and favorable consideration of claims 32-60 and the issuance of a Notice of Allowance with respect to these claims are earnestly solicited.

No fee is deemed necessary in connection with the filing of this Amendment. However, if any fee is required, the Examiner is authorized to charge any such fee to our Deposit Account No. 12-1095.

Dated: October 28, 2004

Respectfully submitted,

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